

FILED
CLERKS OFFICE
JAN 28 2005
U.S. DISTRICT COURT
DISTRICT OF MASS.
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12629-RWZ

USGEN NEW ENGLAND, INC., a
Subsidiary of NATIONAL ENERGY &
GAS & GAS TRANSMISSION, INC.,
f/k/a PG&E NATIONAL ENERGY
GROUP, INC.,

Plaintiff,

v.

BENTLY NEVADA, LLC, f/k/a BENTLY
NEVADA CORPORATION, LLC and
BENTLY PRESSURIZED BEARING
COMPANY, f/k/a BENTLY NEVADA
CORPORATION,

Defendants

AFFIDAVIT OF COUNSEL

I, Craig J. Ziady, being duly sworn, do hereby depose and state as follows:

1. I am an attorney duly admitted to practice law before the Courts of the Commonwealth of Massachusetts. I am a partner with the law firm of Riemer & Braunstein LLP (the "Law Firm"), and have been providing services in connection with the Law Firm's representation of the Defendants, Bently Nevada, LLC and Bently Pressurized Bearing Company, in the above-captioned action.

2. I make this Affidavit based upon personal knowledge and upon the books and records of the Law Firm, which books and records are kept in and as part of the usual course of business.

3. On December 15, 2004, I filed a Notice of Removal, along with its exhibits, a Civil Action Cover Sheet, a List of All Counsel of Record, the filing fee and a Certificate of

Service, by dispatching a paralegal from the Law Firm to hand deliver same to the Clerk of this Court.

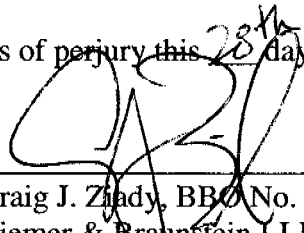
5. These materials were accepted for filing and time-stamped on the date of filing, December 15, 2004. True and accurate copies of the time-stamped evidence of filing are annexed hereto as Exhibit "A".

6. The official docket of the above-captioned case confirms that the filing of the Notice of Removal and related documents occurred on December 15, 2004. A true and accurate copy of the official docket is annexed hereto as Exhibit "B".

7. I became aware on December 16, 2004 that the one-page Civil Category Sheet was not included in the package of materials filed on December 15, 2004. I immediately provided a copy of same by telecopier to the Clerk's Office that morning.

8. On December 16, 2004, I also filed a Notice of Filing of Notice of Removal to Essex County Superior Court by mailing same, postage prepaid, to the Essex County Superior Court Clerk's Office, along with a check in the amount of \$50.00 for obtaining certified copies of docket entries in accordance with Local Rule 81.1.

Signed and sworn under the pains and penalties of perjury this ^{28th}~~20~~ day of January, 2005.



Craig J. Zady, BB# No. 565216
Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
(617) 523-9000

FILED
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2004 DEC 15 P 4:08
CIVIL ACTION NO. _____

USGEN NEW ENGLAND, INC., a U.S. DISTRICT COURT
Subsidiary of NATIONAL ENERGY & DISTRICT OF MASS.
GAS & GAS TRANSMISSION, INC.,
f/k/a PG&E NATIONAL ENERGY
GROUP, INC.,

Plaintiff,

v.

BENTLY NEVADA, LLC, f/k/a BENTLY
NEVADA CORPORATION, LLC and
BENTLY PRESSURIZED BEARING
COMPANY, f/k/a BENTLY NEVADA
CORPORATION,

Defendants

04 12629 RWZ

NOTICE OF REMOVAL

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

The Defendants, Bently Nevada, LLC, f/k/a Bently Nevada Corporation, LLC and Bently Pressurized Bearing Company, f/k/a Bently Nevada Corporation (the "Defendants") submit the following Notice of Removal pursuant to Fed. R. Civ. P. 81(c), and state as follows:

I. Introduction.

1. Plaintiff filed suit against the Defendants in a civil action entitled USGEN New England, Inc. and Gas Transmission, Inc. v. Bently Nevada, LLC, f/k/a Bently Nevada Corporation, LLC and Bently Pressurized Bearing Company, f/k/a Bently Nevada Corporation, Essex Superior Court, Civil Action No. 2004-02042-A (the "State Court Action").

2. The Defendants hereby remove the State Court Action to the United States District Court for the District of Massachusetts.

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

USGEN New England, Inc., a Subsidiary of
National Energy & Gas & Gas Transmission, Inc.,
f/k/a PG&E National Energy Group, Inc.

(b) County of Residence of First Listed Plaintiff Delaware
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Bently Nevada, LLC, f/k/a Bently Nevada
Corporation, LLC; and Bently Pressurized
Bearing Company f/k/a Bently Nevada
Corporation
County of Residence of First Listed Defendant Douglas County, Nevada
(U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Kathleen A. Kelley
Hare & Chaffin
160 Federal St., Boston, MA 02110
(617) 330-5000

Attorneys (If Known)
Joseph R. Valle, Jr./Craig J. Ziady
Riemer & Braunstein LLP
Three Center Plaza, Boston, MA 02108
(617) 523-9000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☒ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|---|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609 |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Defendants seek to remove this case to United States District Court for the District of Massachusetts under 28 U.S.C. Sections 1332 and 1441

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE December 15, 2004

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

RIEMER & BRAUNSTEIN
COUNSELORS AT LAW

Three Center Plaza · Boston, Massachusetts 02108-2003

(617) 523-9000 · Fax (617) 880-3456

E-Mail firm@riemerlaw.com

FILED
CLERK'S OFFICE
2004 DEC 15 P 4:07
U.S. DISTRICT COURT
DISTRICT OF MASS.

Craig J. Ziady
Direct Dial: (617) 880-3442
Writer's Direct Fax: (617) 692-3442
E-Mail: cziady@riemerlaw.com

New York, New York
(212) 302-8880 · Fax (212) 789-3100
Burlington, Massachusetts
(781) 273-2270 · Fax (781) 273-0776

December 15, 2004

BY HAND

Civil Clerk
United States District Court
One Courthouse Way
Boston, MA 02110

Re: *USGEN New England, Inc., et al v. Bently Nevada, LLC, et al*
Essex Superior Court - Civil Action No. 2004-02042-A
Notice of Removal

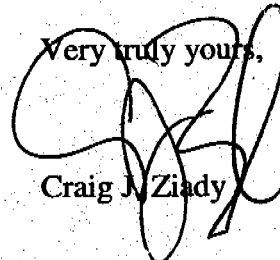
Dear Sir/Madam:

Enclosed please find a Notice of Removal of the above-captioned Massachusetts Superior Court matter to the United States District Court, and a check in the amount of \$150.00 representing the filing fee for same.

Kindly file and docket same in your usual manner and acknowledge receipt and docketing by providing a certified copy of the Notice and returning it to me via the messenger, who has been instructed to wait.

Please feel free to contact the undersigned if you have any questions. Thank you in advance for your usual courtesy and cooperation.

Very truly yours,



Craig J. Ziady

CJZ/jec
Enclosure

cc: Kathleen A. Kelley, Esquire
Brook F. Minx, Esquire
William T. Sebesta, Esquire

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-12629-RWZ**

USGen New England, Inc., et al v. Bently Nevada, LLC et al Date Filed: 12/15/2004
Assigned to: Judge Rya W. Zobel Jury Demand: Defendant
Case in other court: Essex Superior Court, 04-02024-A Nature of Suit: 380 Personal Property:
Cause: 28:1332 Diversity-Property Damage Other
Jurisdiction: Diversity

Plaintiff

USGen New England, Inc.,

represented by **Kathleen A. Kelley**
Hare & Chaffin
160 Federal Street
Boston, MA 02110-1701
617-330-5000
Email: kkelley@hare-chaffin.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

**National Energy & Gas & Gas
Transmission, Inc.**
formerly known as
PG&E National Energy Group

represented by **Kathleen A. Kelley**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Bently Nevada, LLC
formerly known as
Bently Nevada Corporation, LLC

represented by **Craig J. Ziady**
Riemer & Braunstein LLP
Three Center Plaza
Boston, MA 02108
617-523-9000
Fax: 617-880-3456
Email: cziady@riemerlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph R. Valle, Jr.
Riemer & Braunstein LLP
3 Center Plaza
6th Floor
Boston, MA 02108
617-880-3429
Fax: 617-880-3456
Email: JVALLE@RIEMERLAW.com
LEAD ATTORNEY

ATTORNEY TO BE NOTICED**Defendant****Bently Pressurized Bearing Company**represented by **Craig J. Ziady**

(See above for address)

LEAD ATTORNEY**ATTORNEY TO BE NOTICED***formerly known as***Bently Nevada Corporation****Joseph R. Valle, Jr.**

(See above for address)

LEAD ATTORNEY**ATTORNEY TO BE NOTICED**

| Date Filed | # | Docket Text |
|-------------------|----------|--|
| 12/15/2004 | <u>1</u> | NOTICE OF REMOVAL by Bently Nevada, LLC, Bently Pressurized Bearing Company from Essex Superior Court, case number 2004-02042-A. \$ 150, receipt number 60871, filed by Bently Nevada, LLC, Bently Pressurized Bearing Company.(Johnson, Jay) Additional attachment(s) added on 12/17/2004 (Johnson, Jay). (Entered: 12/17/2004) |
| 12/15/2004 | | If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Cohen. (Johnson, Jay) (Entered: 12/17/2004) |
| 12/22/2004 | <u>2</u> | ANSWER to Complaint with Jury Demand by Bently Nevada, LLC. (Johnson, Jay) (Entered: 12/28/2004) |
| 12/22/2004 | <u>3</u> | ANSWER to Complaint with Jury Demand by Bently Pressurized Bearing Company.(Johnson, Jay) (Entered: 12/28/2004) |
| 12/22/2004 | <u>4</u> | CORPORATE DISCLOSURE STATEMENT by Bently Nevada, LLC, Bently Pressurized Bearing Company. (Johnson, Jay) (Entered: 12/28/2004) |
| 01/04/2005 | <u>5</u> | STATE COURT Record. (Johnson, Jay) (Entered: 01/05/2005) |
| 01/13/2005 | <u>6</u> | NOTICE of Scheduling Conference Scheduling Conference set for 2/10/2005 03:00 PM in Courtroom 12 before Judge Rya W. Zobel. (Urso, Lisa) (Entered: 01/13/2005) |
| 01/14/2005 | <u>7</u> | MOTION to Remand to State Court by USGen New England, Inc., (Kelley, Kathleen) (Entered: 01/14/2005) |
| 01/14/2005 | <u>8</u> | MEMORANDUM in Support re <u>7</u> MOTION to Remand to State Court filed by USGen New England, Inc., (Kelley, Kathleen) (Entered: 01/14/2005) |

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| PACER Service Center |
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12629-RWZ

USGEN NEW ENGLAND, INC., a
Subsidiary of NATIONAL ENERGY &
GAS & GAS TRANSMISSION, INC.,
f/k/a PG&E NATIONAL ENERGY
GROUP, INC.,

Plaintiff,

v.

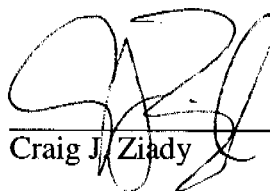
BENTLY NEVADA, LLC, f/k/a BENTLY
NEVADA CORPORATION, LLC and
BENTLY PRESSURIZED BEARING
COMPANY, f/k/a BENTLY NEVADA
CORPORATION,

Defendants

CERTIFICATE OF SERVICE

I, Craig J. Ziady, hereby certify that on this date, January 28, 2005, I served the foregoing
Opposition, along with its accompanying Affidavits of Counsel, of Brian C. Palmer, and of
Jeffrey Jarboe, by causing copies of same to be delivered by first-class mail, postage prepaid,
unless otherwise indicated, to:

Kathleen A. Kelley, Esquire (by hand)
Hare & Chaffin
160 Federal Street
Boston, MA 02110


Craig J. Ziady

12581.629.873061.1